



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 175199

PRELIMINARY RECITALS

Pursuant to a petition filed on June 24, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Walworth County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on September 6, 2016, by telephone. The record was held open to allow petitioner to submit additional documentation, which was received timely.

The issue for determination is whether petitioner was overpaid FS benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Dianna Wojcik

Walworth County Department of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED]
2. During the period of December, 2015, through May, 2015, petitioner was a recipient of Wisconsin FS benefits.

3. During the period of December, 2015, through May, 2015, petitioner was a student, and was participating in federal work study.

DISCUSSION

The respondent first requests that this matter be dismissed as it was filed several months after the appeal deadline had passed. However, the petitioner testified that she received the overpayment notice, and immediately called the respondent; petitioner averred that the respondent instructed the petitioner to submit verification, which she immediately did. It does not appear that the respondent accepted the sufficiency of the verification, however, this was not related to petitioner. Petitioner credibly testified that she did not file an appeal of this matter because she provided the respondent with the information requested, and did not hear anything further from them. As such, I conclude that I retain jurisdiction in this matter.

As a general proposition, the federal FS rules declare that a person aged 18 to 49, who is enrolled in an institution of higher education, is ineligible to receive FS. This general prohibition is stated in 7 C.F.R. §273.5(a), below:

§273.5 Students

(a) *Applicability.* An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section. An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum or if the individual is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(b) *Student Exemptions.* To be eligible for the program, a student as defined in paragraph (a) of the section must meet at least one of the following criteria.

(1) Be age 17 or younger or age 50 or older;

(2) Be physically or mentally unfit;

(3) Be receiving Temporary Assistance for Needy Families under Title IV of the Social Security Act;

(4) Be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;

(5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;

(6) Be participating in a State or federally financed work study program during the regular school year.

(i) To qualify under this provision, the student must be approved for work study at the time of application for food stamps, the work study must be approved for the school term, and the student must anticipate actually working during that time. The exemption shall begin with the month in which the school

term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(ii) The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.

(emphasis added)

7 C.F.R. §273.5(a),(b). See in accord, the Wisconsin policy authority, *FS Wisconsin Handbook*, 3.15.1.

The arithmetic of the agency's overpayment determination is not in dispute. Rather, the petitioner explained that she had provided all requested information to the agency, and that she did nothing wrong. The agency coded this as agency error, and noted that it must collect overpaid benefits, even if the overpayment was caused by the agency itself. This mandatory recovery is required under federal law, which means that a state official, such as myself and the county agency, must comply with that requirement.

The requirement goes out the window, however, where the overpayment itself is not established. The respondent has asserted an overpayment during the time period in question because the petitioner was an ineligible student. That is incorrect. Petitioner established that she was participating in federal work study during the period in question. Post-hearing, petitioner provided computer screenshots of her financial aid information that clearly establish that she was participating in federal work study in the 2014-2015 school year. The record reveals no other basis or alleged basis of ineligibility.

As no overpayment has occurred, this matter shall be remanded to the respondent to rescind the overpayment determination, cease all collections activity related thereto, and refund to petitioner any monies already recouped.

CONCLUSIONS OF LAW

The petitioner was not overpaid FS from December, 2014, through May, 2015, due to agency error.

THEREFORE, it is

ORDERED

That this matter shall be remanded to the respondent to rescind the overpayment determination, cease all collections activity related thereto, and refund to petitioner any monies already recouped. All actions required by this Order shall be completed within 10 days following issuance of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of October, 2016

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 7, 2016.

Walworth County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability